

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9668 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH @ BHURIYO RAMABHAI KATARIYA

Versus

DISTRICT MAGISTRATE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR KT DATE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Jyotsana Patel for
H.L.Patel Advocates on behalf of the petitioner and
Mr.K.T.Dave, learned AGP appearing for respondents No.
1, 2 & 3.

#. The detention order dated 27-5-99 passed by respondent No. 1 - The District Magistrate, Mehsana against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that in all five criminal cases are registered against the petitioner at Kalol Police Stations in between 6-11-97 and 5-1-99 for the different offences punishable under Chapter 16 & 17 of IPC. That first four cases are pending for trial in the Court while 5th case is pending for investigation. Over and above, that two witnesses on assurance of their anonymity have given their statement vide date 12-2-99 and 23-5-99 respectively against the petitioner regarding the anti social activities of the petitioner. That the first witness has not stated day, date and time regarding the alleged incident while the second witness has stated that the alleged incident of extortion of Rs.200/- from him and looting of Rs.135/had occurred on 15 days prior to his statement. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as first four offences registered and stated in the grounds of detention, are not proximate in time of taking impugned action of passing order. That the said offences are alleged to have occurred on 6-11-1997, 21-5-98, 9-10-98 and 2-5-98. Even the last offence is registered at 5-1-99. Thus, there is no casual connection between registered offence and the date of impugned order and there is no reasonable explanation either in the grounds of detention or affidavit in reply to the petition.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the

Hon'ble Supreme Court has held that delay in taking action against the detenu from the date of alleged anti social activities, the detention order is bad in law. That his Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonably explanation for delayed action, the detention order cannot be sustained.

#. In the instant case, on scrutiny of papers, despite due service of rule, no affidavit in reply has been filed by either of the respondents. That the grounds of detention is devoid of any averments to show a casual connection or facts that the live link between the alleged anti social activities of the petitioner has continued till the date of passing impugned order. That the statements of anonymous witnesses recorded on 12-2-99 and 23-5-99 having recorded to the effect that the petitioner was released on bail on 7-1-99 in the context of facts stated therein do not inspire any confidence as to be genuine statements. Under these circumstances, it is difficult to uphold the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 27-5-99 passed by respondent No. 1 - The District Magistrate, Mehsana against the petitioner is hereby quashed and set aside. The petitioner - PRAKASH @ BHURIYO RAMABHAI KATARIYA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 7-2-2000 [A.K.Trivedi, J.]

#kailash#